IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.255 OF 2006

Chandrabhaga Ankush Adak ...Appellant

vs.

Ratnabai Tukaram Tambe
Parvatibai Baban Khaire
Balasaheb Baban Khaire
Sudam Baban Khaire
Sushila Ashok Satkar ...Respondents

Ms Varsha Palav for the Appellant
Mr.K.S.Dewal for Respondent No.1.
Mr.Suresh Bhosale for Respondent Nos.2 to 5.

CORAM: A.S.OKA,J.
DATE : JULY 16, 2007.

ORAL JUDGMENT:

1. Heard learned Advocates for the parties. The Second Appeal is filed by the original Plaintiff in Regular Civil Suit No.191 of 2003. The said suit was filed by the Appellant against the Respondents for declaration that the Appellant has 1/24th undivided share in the suit property more particularly described in paragraph 1 of the plaint. A prayer is also made for perpetual injunction restraining the first Respondent and other Respondents from creating any third party interests in respect of the suit property. The Trial court partly decreed the suit by passing the following order :

"1. Suit is partly decreed with costs.

2. Plaintiff is entitled to get 1/24th share, Defendant

no.1 8/24th, Defendant Nos.3,4 7/24th share each and Defendant No.5 1/24th share in all suit lands except gat No.1869 of village Shikrapur by way of partition and separate possession.

3. Decree be drawn up accordingly and sent to the Collector, Pune for partition to the extent of agricultural lands.

4. The Partition of suit house be effected through Court Commissioner. "

An Appeal was preferred by the Appellant-Plaintiff. By a Judgment and Decree dated 6th December 2005, the Appeal has been dismissed. Thus, in the suit filed by the appellant, there is a declaration made that the first defendant was having 8/24th share in the properties subject matter of the suit filed by the Appellant.

3. The declaration granted by the trial court is confined to the suit property mentioned in the suit filed by the Appellant save and except the property bearing Gat No.1869 of Village Shikrapur. The trial court has also passed a decree for partition.

4. It is not in dispute that the first Respondent herein has filed a Special Civil Suit No.290 of 2003 for various reliefs

including the relief of partition and separate possession of her alleged 1/6th share in respect of the various properties including the properties which are subject matter of the present Appeal. In fact, the substantive suit filed by the first Respondent was instituted on 19th March 2003 and the suit filed by the Appellant was instituted on 28th September 2003.

5. When a query was made to the learned Advocates for the parties as to why both the suits were not heard and decided together, the learned Advocates for the parties, on instructions, state that the impugned Judgments and Decrees in this Second Appeal may be quashed and set aside and the trial court may be directed to hear and decide both the suits together.

6. Considering the nature of the prayers in both the suits, the suggestion made by the learned Advocates for the parties is logical and reasonable.

7. In view of the aforesaid discussion and in view of the statements made by the learned Counsel for the parties, detailed reasons are not required to be assigned for finally deciding the Second Appeal.

8. Accordingly, Appeal is disposed of by passing the

following order :

i) Impugned Judgments and Decrees are quashed and set aside and the Regular Civil Suit No.191 of 2003 is restored to the file.

ii) The learned Principal District Judge, Pune will transfer the Regular Civil Suit No.191 of 2003 to the court in which Special Civil Suit No.290 of 2003 filed by the first Respondent is pending.

iii) Both the aforesaid suits will be heard together.

iv) The learned Trial Judge will permit the parties to complete the pleadings within a period of six weeks from the date of receipt of writ of this order.

v) After the pleadings are complete, the learned Trial Judge will proceed to decide both the suits after giving an opportunity to both the parties to adduce the evidence in Special Civil Suit No.290 of 2003. The learned trial Judge will also permit the parties to lead further evidence, if any, in Regular Civil Suit No.191 of 2003.

vi) Interim relief, if any, granted during the pendency of the aforesaid suits will continue to operate till the

final disposal of both the suits.

vii) The trial court will endeavour to decide both the suits as expeditiously as possible and preferably on or before 31st July 2008.

viii) All contentions of the parties on merits of both the suits are expressly kept open.

ix) Second Appeal is partly allowed in above terms with no order as to cost.

x) Writ to be sent immediately.

JUDGE